IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 21ST MARCH 2007 / 30TH PHALGUNA 1928

MACA.No. 354 of 2007()

(AGAINST THE AWARD IN OP(MV).No.568/99 OF THE IST ADDL. M.A.C.T., KOZHIKODE)

APPELLANT/PETITIONER:

M. RAJAN, AGED 42 YEARS,
S/O.MATHIYAMBIRA, MAYANGOT HOUSE,
P.O.KODANCHERRY, KOZHIKODE DISTRICT.

BY ADV. SRI.JACOB ABRAHAM

RESPONDENTS/RESPONDENTS:

1. CHARLES ABRAHAM, S/O.ABRAHAM,
   OTTAPLACKAL PUTHENVEETTIL, P.O.KOOROPADA,
   PAMBADI, KOTTAYAM DISTRICT.

2. THE BRANCH MANAGER,
   UNITED INDIA INSURANCE CO.LTD.,
   CITY BRANCH, PEREKULAM BUILDING,
   KOTTAYAM0686 002.

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 12/3/2007, THE COURT ON 21/3/2007 DELIVERED THE FOLLOWING:

P.R.RAMAN & ANTONY DOMINIC,JJ.

M.A.C.A.NO.354 OF 2007

Dated this the 21st day of March, 2007

JUDGMENT

Raman, J.

Appellant herein was the petitioner in O.P.(MV).No.568/1999 on the file of the Motor Accidents Claims Tribunal, Kozhikode.. Appellant sustained injuries in a motor accident occurred on 8/8/1998. It is alleged that the accident occurred due to the negligence on the part of the driver of the car. According to the appellant, he sustained grievous injuries and he was taken to the Medical College Hospital, Kottayam. The injuries sustained by him were comminuted fracture shaft of right femur, both bones right leg upper one third, lacerated wound left gluteal region etc. According to him, he underwent surgeries on different dates. He was an inpatient in the hospital from 9/8/1998 to 8/9/1998 and thereafter he also underwent treatment in the Local Hospital and Medical College Hospital. According to him, he attended the Primary Health Centre for the purpose of removal of plaster of paris and continuation of treatment. He was admitted in the Medical College Hospital, Kozhikode from 16/11/2001 to 21/11/2001 for removal of implants. As a result of the injuries suffered,

according to him, he suffered permanent partial disablement, which assessed by the Medical Board. He claimed an amount of Rs.3,00,000/-. The Tribunal awarded an amount of Rs.54,500/- with interest at 6% per annum from the date of original petition till the date of payment. An amount of Rs.1,000/- was also awarded towards costs.

2. The Tribunal found that the accident occurred as a result of the rashness and negligence on the part of the car driver and there is a valid policy of insurance with the United India Insurance Company, the 2nd respondent in the O.P. It went on to consider the evidence adduced in the matter. There was no oral evidence adduced by the parties. Exts. A1 to A4 and X1 were marked. Ext.A1 is a F.I.R to prove the negligence on the part of the driver. As per Ext.A2 wound certificate the appellant had abrasion on the left side of nose, upper lip and he had multiple abrasion on the dorsum of the right hand. He had also a fracture of femur shaft right. Ext.A3 is the discharge certificate which shows that he was admitted in the Medical College Hospital from 9/8/1998 to 8/9/1998. He had fracture of shaft of femur right and both bones of left leg, as per Ext.A3. Ext.A4 and Ext.X1 certificates from the Medical College, Kozhikode were also on record. As per Ext.X1 certificate he sustained 6% disability. He was 42 years of age at

the time of the accident.

3. The Tribunal awarded an amount of Rs. 2,000/- towards expenses for transport to hospital, Rs.3,000/- towards extra nourishment and Rs.300/- towards damage to cloth. Since he was in the hospital as an inpatient for 30 days, an amount of Rs.3,000/- is also awarded. An amount of Rs.20,000/- was awarded towards pain and suffering and Rs.5,000/- was awarded towards loss of income. Taking into consideration the age of the petitioner, adopting the multiplier as 15 and taking the annual income at Rs.18,000/- the compensation towards disability was fixed at Rs.16,200/-. A further amount of Rs.5,000/- was fixed towards loss of future earning capacity. Thus a total amount of Rs.54,500/- was awarded against the respondents jointly and severally to pay the same. Since an amount of Rs.25,000/- was already awarded under Section 140 of the Motor Vehicles Act, this amount is to be deducted from the total compensation awarded. Claiming further enhancement the appellant has filed this appeal.

4. We have considered the arguments of the learned counsel appearing for the appellant and the respondents. The appellant/petitioner did not adduce any evidence regarding the monthly income. Hence the income fixed by the Tribunal at Rs.18,000/- cannot be interfered with. In

such circumstances, the Tribunal was right in fixing the income at Rs.18,000/-. The medical certificate produced in this case shows 6% disability. Taking the proper multiplier as 15 and only the income of Rs.18,000/- the compensation has been rightly worked out. We found that reasonable compensation has been awarded under various other heads also. The appellant was not able to substantiate his contention based on any legal principle that he is entitled for more amount than what has been awarded by the Tribunal. But we find that no amount is awarded by the Tribunal towards future treatment. According to the appellant, even after he was discharged from the hospital, he had to be admitted to the Primary Health Centre for removal of plaster of paris and continuation of treatment and also to the Medical College Hospital for removal of implants.

5. Considering the future treatment, we find that an amount of Rs.10,000/- shall be awarded towards such treatment expenses. The appellant would contend that the cost awarded in this case is a meagre amount of Rs.1,000/- and as per Rule 381(2) of the Kerala Motor Vehicles Rules, he is entitled for more amounts by way of cost. We find no merit in this contention, since even according to the appellant, he did not produce any certificate of fee claiming more amounts than what has been awarded.

In such circumstances, the amount of Rs.1,000/- awarded towards cost cannot be said to be low.

6. In the result, over and above the amount already awarded by the Tribunal we award a further amount of Rs.10,000/- which will carry interest at 7% from the date of the petition till realisation. The award is modified to the above limited extent.

Appeal is thus allowed partly.

P.R.RAMAN,
Judge.

ANTONY DOMINIC,
Judge.

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